

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDERICK SIEGFRIED GEIHS,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
RONALD D. PARRAGUIRRE,
DISTRICT JUDGE,

Respondents,

and

RICHARD C. BEHLING, D/B/A
BEHLING EXCAVATING,
Real Party in Interest.

No. 39740

FILED

JUL 10 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Smith*
DEPUTY CLERK

ORDER DENYING PETITION FOR WRITS OF MANDAMUS AND
PROHIBITION AND DENYING MOTION FOR STAY

Through this petition for writs of mandamus and prohibition, attorney Frederick Geihs seeks to compel the district court to reinstate its decision that his attorney's lien must be adjudicated in an independent action, to vacate its order adjudicating the lien on reconsideration and to prohibit the district court from adjudicating the lien in the underlying proceeding. Geihs has also moved to stay the order adjudicating the lien and releasing court-held funds to the real party in interest, his former client Richard Behling.

We have reviewed the petition, and we conclude that our intervention is not warranted. We may, at our discretion,¹ issue an

¹Smith v. District Court, 107 Nev. 674, 677, 818 P.2d 849, 851-52 (1991).

extraordinary writ to compel the district court to perform a required act,² or to control an arbitrary or capricious exercise of discretion,³ or to arrest proceedings that exceed the court's jurisdiction.⁴ Here, Geihs has not demonstrated that the district court failed to perform any required act, exercised its discretion arbitrarily or capriciously, or acted without jurisdiction.

The district court clearly had both statutory and inherent jurisdiction to resolve the dispute between Behling and Geihs in the underlying action in which the dispute arose.⁵ NRS 18.015(4) authorized the district court to adjudicate their rights upon Behling's motion. The court declined to do so, based on its mistaken belief that Behling had submitted the fee dispute and allegations of attorney misconduct to the State Bar of Nevada for resolution. In fact, Behling had not done so. Behling moved for reconsideration, and clarified that no malpractice or disciplinary proceedings had been instituted in any forum.

The court granted reconsideration, noted that Geihs had been paid \$19,250 for the services he rendered before he withdrew, and held that his lien for an additional \$13,064.53 seemed unreasonable and

²NRS 34.160 (mandamus).

³Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

⁴NRS 34.320 (prohibition).

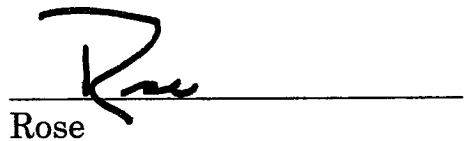
⁵Gordon v. Stewart, 74 Nev. 115, 118, 324 P.2d 234, 236 (1958); see Sarman v. Goldwater, Taber and Hill, 80 Nev. 536, 539-41, 396 P.2d 847, 849 (1964) (the nature of the lien, whether charging or retaining, does not affect the court's power to determine it, since the lien itself is not the basis for the attorney's right to be paid for services; the attorney's right to be paid is based upon contract theories).

excessive in light of the case's \$32,000 value and the extent of his work.⁶ The court expunged the lien and ordered the court clerk to release the disputed funds to Behling. In doing so, the court did not exercise its discretion arbitrarily or capriciously. Although Behling had agreed to pay Geihs \$200 per hour and costs, as or before the fees and costs accrued, Geihs moved to withdraw early in the case, two months before the scheduled arbitration hearing. Geihs continued to assert that the case was worth \$100,000 to \$200,000, although the arbitration commissioner and the district court had both determined that it was worth less than \$40,000. After Geihs withdrew, Behling's new attorney obtained a \$32,000 settlement for Behling. More than 60% of that amount, \$19,250, had already been paid to Geihs, who did not demonstrate that he was reasonably entitled to more.

Accordingly, we deny the writ petition. We also deny the motion for a stay.

It is so ORDERED.

 J.
Shearing

 J.
Rose

 J.
Becker

⁶We note that Geihs's claim for \$13,064.53 in addition to the \$19,250 he had already received translated to a total claim for more than 100% of the settlement proceeds.

cc: Hon. Ronald D. Parraguirre, District Judge
Frederick S. Geihs
Charles M. Damus
Clark County Clerk